

Message

From: Wu, Jennifer [Wu.Jennifer@epa.gov]
Sent: 9/26/2018 12:03:30 AM
To: Soscia, Mary Lou [Soscia.Marylou@epa.gov]
Subject: FYI: 316(b) overview
Attachments: RTC Doc for the Final Section 316(b) Existing Facilities Rule_Essay 14.pdf; R10 Hydroelectric NPDES permits and CWA 316(b)_2018_09_25_v2_jw.docx; 091818_Lower_Columbia_dams_pre-draft_Fact_Sheet.docx

Mary Lou, here's some info:

For background overview, I might start with the Lower Columbia Fact Sheet on page 43. Here's the main overview:

A. Cooling Water Intake Structure (CWIS)

Section 316(b) of the CWA, 33 USC § 1316(b), requires that facilities with CWIS ensure that the location, design, construction, and capacity of the structure reflect the best technology available (BTA) to minimize adverse impacts on the environment. The rule establishes BTA standards to reduce impingement and entrainment of aquatic organisms at existing power generating and manufacturing facilities. Impingement occurs when fish or shellfish become entrapped on the outer part of intake screens and entrainment occurs when fish or shellfish pass through the screens and into the cooling water system.

On August 15, 2014, the EPA promulgated regulations (40 CFR 125.90) to implement CWA Section 316(b) at existing facilities with CWIS with a design intake flow greater than 2 MGD and that use at least 25% of the withdrawn water for cooling purposes. These regulations establish requirements for minimizing adverse environmental impacts associated with CWIS and procedures, including permit application requirements, for establishing the appropriate technology requirements. Together these requirements represent BTA for minimizing adverse environmental impacts associated with the use of CWIS. If a facility with a CWIS falls below the thresholds set forth in 40 CFR 125.90, then BTA is established on a case-by-case basis using best professional judgment.

McNary Lock and Dam has no cooling water discharges in Washington, so CWA Section 316(b) provisions do not apply. For the remaining projects, the total amount of cooling water taken in is more than 2 MGD and more than 25% of the withdrawn water is used for cooling purposes. The cooling water intakes for the Lower Columbia River hydroelectric facilities are the points where water is diverted for cooling water purposes. For example, where cooling water is drawn off the scroll case, the intake is the point where the water is diverted from the scroll case. The cooling water intake is *not* the gravity intake where water from the river is taken in for hydroelectric purposes. That intake is for pass-through water for hydroelectric purposes, which do not require an NPDES permit (*See National Wildlife Federation v. Consumers Power Company*, 862 F.2d 580 (6th Cir. 1988); *National Wildlife Federation v. Gorsuch*, 693 F.2d 156 (D.C. Cir. 1982)). However, at the point that water is diverted for cooling water and pollutants are added, such as heat, those waters require NPDES permits.

The second attachment is the latest on what HQ put together that they plan to brief OWM on. The first attachment is from Paul Shriner who wrote the 2014 implementing regulations for 316(b). Hope this helps! And good talking with you today! - Jenny

From: Shriner, Paul
Sent: Tuesday, September 25, 2018 6:52 AM
To: Wu, Jennifer <Wu.Jennifer@epa.gov>; Ramach, Sean <Ramach.Sean@epa.gov>
Cc: Witt, Richard <Witt.Richard@epa.gov>; Weber, Courtney <Weber.Courtney@epa.gov>
Subject: RE: Heads up on 316(b) briefings/questions

Hi All:

As an FYI, attached is Essay 14 from the 316(b) existing facilities rule Response to Comment document in the docket for the rule. Sean and Richard are well aware of this record, but I thought it may be helpful for Jenny, Courtney, and others in R10 to have at their fingertips. This is a public document, so feel free to share. I highlighted several occasions where we reiterate that those not subject to the rule are still subject to section 316(b). Also note the various comments asking for exemptions (such as seafood and O&G) and EPA's response that there are no exemptions from 316(b).

Regards,
Paul

From: Wu, Jennifer

Sent: Friday, September 21, 2018 3:21 PM

To: Ramach, Sean <Ramach.Sean@epa.gov>; Shriner, Paul <Shriner.Paul@epa.gov>

Subject: Heads up on 316(b) briefings/questions

Hi Sean and Paul,

As in my voicemail, I wanted to give you both the heads up that BOR called me yesterday to follow up on our call with them on 9/12. They said they appreciated the presentation and learned a lot, but still "agreed to disagree" on 316(b) applicability to hydroelectric dams. They asked us to delay permit issuance until we resolved this issue.

At this point, we're not inclined to delay permit issuance unless they contact the Administrator, and we are told to delay the permit. I've been told to proceed with developing the permit unless there are other reasons to pause the permit (e.g., they're missing a number of outfalls in their application). Still, Dan Opalski, the Office Director was at a Federal Caucus Executive Board meeting which includes senior managers in the federal family, including BOR and the Corps. He acknowledged concerns on 316(b) and said while we still believe 316(b) applies, he would run it up the chain at EPA HQ. He contacted Andrew Sawyer at OWM, and our attorney is going to prepare briefing materials to run it up OGC next week. So FYI in that you may hear about it. If you'd like to talk more, feel free to call. Otherwise, I'll keep you in the loop to make sure informed esp for anything that might affect you.

Thanks!

Jenny Wu

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